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COMMITTEE ON THE RIGHTS OF THE CHILD

First session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 October 1991, at 3 p.m.

Chairman: Mrs. BADRAN

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The meeting was called to order at 3.25 p.m.

ADOPTION OF THE RULES OF PROCEDURE (agenda item 4) (continued) (CRC/C/1)

Rule 66

1. Mrs. BELEMBAOGO referred to the case where a State party did not respond to the Committee's invitation, despite several reminders. In addition to notifying the General Assembly, could the Committee not find a way of identifying the basic reasons for the failure of States parties to comply with their obligations?

2. Mrs. SANTOS PAIS, referring to the comment by Mrs. Belembaogo, asked whether, in the event of a State party failing to submit a report for many years, the Committee on the Rights of the Child might not, like the Committee on the Elimination of Racial Discrimination, consider the status of the implementation of the Convention in the country concerned in the absence of representatives of that country, taking into account information which might come to it from other sources.

3. Mr. HAMMARBERG said that the Committee had another means of bringing pressure to bear by raising the problem of failure to submit reports at meetings of States parties. However, what sometimes happened was that Governments encountered difficulties in incorporating the provisions of the Convention into their national legislation or in ensuring respect for them in practice. In that connection, the advisory services of the Centre for Human Rights were very useful because they promoted a spirit of cooperation rather than a punitive approach.

4. Mrs. KLEIN-BIDMON (Secretariat) said that, as Mrs. Santos Pais had pointed out, other treaty bodies had experienced that kind of problem and had had to find solutions other than sending reminders to the State party concerned. For example, the Human Rights Committee invited the Permanent Representative of the State party concerned to review the situation with a member of the Bureau, and that practice had sometimes yielded positive results. In the case of other bodies, the Chairman decided to send a personal letter to the Minister for Foreign Affairs of the State party concerned asking him why no report had been submitted. That initiative had also yielded some results. The procedure adopted by the Committee on the Elimination of Racial Discrimination at its most recent session in August 1991 had led to a positive response by one State party out of 11.

5. Mrs. EUFEMIO asked whether, in the reminders sent to States parties, treaty bodies invited Governments to indicate the difficulties which might have prevented them from submitting their reports. That would be a way of encouraging States to respond to the reminders sent to them.

6. Mrs. KLEIN-BIDMON (Secretariat) said that it was up to the Committee to tell the secretariat what reminders should contain. The failure by States parties to submit reports had been a matter of concern to the General Assembly for many years and it had requested the secretariat to send a note to all

States which had not fulfilled their obligations asking them the reasons for that failure. There had been very little reaction to that initiative so far, since the majority of the States parties concerned had not responded.

7. The CHAIRMAN said that, as it stood, rule 66 provided for only two types of reaction in the case of States which did not fulfil their obligation to submit reports: the first was to send a reminder to the State party concerned and, if that initiative failed, the second was for the Committee to indicate that fact in its report to the General Assembly. Those two measures corresponded to paragraphs 1 and 2 of rule 66. In an effort to understand the problems encountered by States parties and to simplify the reporting procedure, it might be possible to add a provision between those two paragraphs allowing the Committee to take steps, where a reminder sent to a State party went unanswered, to try to understand the reasons for that situation and to facilitate the reporting procedure. Paragraph 2, which would thus become paragraph 3, would consequently read: "If, even after the reminder and the steps referred to in paragraphs 1 and 2 of this rule, the State party does not submit the required report or additional information, the Committee shall include a reference to this effect in its report to the General Assembly".

8. Mrs. BELEMBAOGO said that she endorsed the Chairman's proposal.

9. Mr. KOLOSOV said that the "sanction" referred to in paragraph 2 of rule 66, namely, notification to the General Assembly that States parties had not fulfilled their obligations, was a very harsh measure. The Committee's report would be submitted to the Third Committee of the General Assembly and, through it, to the General Assembly itself; during that procedure, the name of the State party concerned would inevitably be brought up before the community of the Member States of the United Nations. The provision concerning the advisory services of the United Nations should therefore come before the provision concerning the measures to be adopted as a last resort. He therefore proposed either that rule 66 should not be amended or that the proposed amendment should be added between paragraphs 1 and 2 rather than after paragraph 2.

10. Mrs. SANTOS PAIS said that she supported the proposals by the Chairman and Mr. Kolosov. It might also be useful if the Committee notified States parties, when it sent them the reporting guidelines, of its wish to enter into a dialogue and to cooperate with them, with the support of the Centre for Human Rights, which could, where necessary, help them prepare and submit their reports.

11. Mrs. EUFEMIO, comparing the texts of rules 66 and 69, suggested that the United Nations specialized agencies and the United Nations Children's Fund might be asked to help out in cases where States parties failed to submit reports.

12. Mr. HAMMARBERG said that UNICEF, for example, could not be expected to make up for the shortcomings of States, since its role was rather to help Governments fulfil their obligations, without, however, prejudicing the division of labour between UNICEF and the Centre for Human Rights.

He also endorsed Mrs. Santos Pais' proposal, which offered the advantage of establishing at an early stage a dialogue between the Committee and the States which might need the advisory services of the United Nations.

13. Mrs. EUFEMIO said her proposal was not that the United Nations specialized agencies or UNICEF should take the place of Governments in the preparation of reports. She had only been suggesting that those bodies might put some pressure on the States parties concerned.

14. The CHAIRMAN, summing up the discussion, said the members of the Committee agreed to recognize that United Nations bodies had an important role to play in that they could assist Governments to fulfil their obligations without taking their place. Moreover, the Committee did not intend systematically to take strong action in respect of States which did not submit their reports, thereby leaving open the possibility of a continuing dialogue with the States parties concerned. Lastly, she asked the members of the Committee whether rule 66 should be amended or not.

15. Mrs. SANTOS PAIS proposed that Mr. Kolosov should read out the amendment he had proposed to paragraph 1 of rule 66.

16. Mr. KOLOSOV proposed that the words "and/or undertake any other efforts to establish a dialogue with the State concerned" should be added at the end of paragraph 1.

17. Mrs. SANTOS PAIS proposed that the last part of paragraph 2 should be amended to read: "the Committee shall consider the situation as it deems appropriate and include a reference to this effect in its report to the General Assembly". Such wording would allow the Committee to decide on the measures to be taken to solve the problem.

18. The CHAIRMAN also suggested that the words "and the dialogue" should be added after the word "rule" in the first part of paragraph 2.

19. Mr. HAMMARBERG said that he had reservations about the proposed amendments. In his opinion, the Committee should be very firm with States parties which did not submit reports as requested and make them understand that, if they did not fulfil their obligations, their name might be mentioned in the Committee's report to the General Assembly. Anything resembling negotiation with Governments could only detract from the Committee's work. He was also not sure that the Committee could establish a dialogue with States parties until they had submitted their reports. The Committee, which had been established in accordance with an international instrument, did not have to include advisory services for Governments in its programme of work. That type of activity was, rather, the responsibility of the Centre for Human Rights. In addition, the establishment of such a dialogue could only add to the Committee's workload even before it had started to consider reports. He therefore thought that all those matters should be given further consideration and that efforts should be made to draft rule 66 more precisely. He proposed that the Committee should postpone the adoption of the rule.

20. The CHAIRMAN said that, if she heard no objection, she would take it that the Committee agreed to Mr. Hammarberg's proposal that the adoption of rule 66 should be deferred.

21. It was so decided.

Rule 67

22. Mrs. SANTOS PAIS said that rule 67 did not refer to the organs and bodies which were entitled to be represented at the meetings of the Committee and which were mentioned in article 45 (a) of the Convention. It seemed to her that those bodies should also be informed of the date, duration and place of the session at which reports of States parties would be examined in order to highlight the cooperation and partnership between them and the Committee.

23. Mrs. KLEIN-BIDMON (Secretariat) pointed out that rule 67 dealt only with relations between the Committee and the States parties which had submitted reports to it. It contained explanations on the way in which the Committee proceeded when it considered reports. The question of the participation of observers which Mrs. Santos Pais had raised was dealt with in rule 34.

24. Mrs. SANTOS PAIS said she hoped that the Committee would take account of the need to inform the specialized agencies and United Nations bodies and organs of the date, duration and place of meetings devoted to the examination of reports of States parties when it came back to rule 34.

25. The CHAIRMAN said that, if she heard no objection, she would take it that the Committee adopted rule 67 as it stood.

26. Rule 67 was adopted.

Rule 68

27. Mgr. BAMBAREN GASTELUMENDI said that he would like to know what the Committee would do in the hypothetical case where a Government stated clearly in its report that children's rights were not respected in its country. It would not be necessary to request it to submit an additional report or additional information, since it would already have furnished all the required information. What would be the procedure to be followed in such a case?

28. Mr. HAMMARBERG said he assumed that Mgr. Bambaren Gastelumendi was referring to the failure to respect children's rights by individuals or guerrilla movements rather than by Governments. It should be recalled that the international human rights instruments, which included the Convention on the Rights of the Child, were addressed mainly to Governments and were concerned solely with violations committed by the latter or their representatives or agents. There was no doubt that, in so far as the Committee was concerned with the situation of children and ways to protect them, it should also be able to examine cases of violations committed by individuals even if that was not strictly in accordance with its mandate. It was none the less true that only Governments were accountable to the Committee.

29. Miss MASON proposed that paragraph 1 should be deleted because it was superfluous and that the words "Pursuant to article 44 of the Convention" should be added at the beginning of paragraph 2.

30. Mrs. SANTOS PAIS said she was prepared to support that proposal if an explicit reference to article 44 of the Convention was included in paragraph 2, preferably after the words "State party" in the first line.

31. Mr. KOLOSOV said that rule 68 dealt with a very special situation and that it was not by chance that paragraph 1 had been included in it. The two paragraphs corresponded to two stages in the procedure followed by the Committee. Paragraph 1 stated clearly that the Committee should first determine whether the report provided all the information required. If it did, the Committee decided to examine the report. If it did not - and that was the purpose of paragraph 2 - the Committee could not examine the report and therefore requested the State party concerned to furnish additional information in order to enable it to do so. Consequently, he was not in favour of deleting paragraph 1.

32. Miss MASON said that, in order to form an opinion, the Committee obviously had to read the reports submitted to it. She therefore did not see the need to mention that point and maintained her proposal that paragraph 1 should be deleted and paragraph 2 amended to read: "Pursuant to article 44 of the Convention, if a report of a State party to the Convention, in the opinion of the Committee, does not contain sufficient information, the Committee may request that State to furnish an additional report or additional information, indicating the time-limit within which such additional report or information should be supplied".

33. Mrs. KLEIN-BIDMON (Secretariat) suggested that, for reasons of style, the beginning of the paragraph should be amended to read: "If, in the opinion of the Committee, a report submitted by a State party pursuant to article 44 of the Convention does not contain sufficient information, ...".

34. Mr. KOLOSOV said that he had doubts about the advisability of combining the two paragraphs of rule 68 into a single paragraph. In his opinion, that would mean skipping an essential stage in the procedure for examining reports; it must not be forgotten that, during the meetings in which it studied the report submitted by the State party with the representative of that State, the Committee could request additional information and express its views on the shortcomings and merits of the report, but it was not authorized at that stage to request an additional report if it considered that the State had not provided all the information required under rule 65. That was the raison d'être of rule 68, paragraph 1, which offered the Committee the possibility of requesting, where necessary, an additional report before inviting the State party to come and introduce its report.

35. Mr. HAMMARBERG recognized that, exceptionally, a report might not provide even the essential information on the implemention of the Convention by the State party concerned and that the need to request an additional report could arise even before the Committee had begun to consider it. However, in the majority of cases, it was during the discussion on the substance of the report

that the shortcomings in the information provided would become evident and it was then, if the dialogue with the representative of the State party did not make it possible to resolve them, that the Committee had to be able to request an additional report or additional information. The new wording proposed for rule 68 clearly reflected that idea.

The meeting was suspended at 4.35 p.m. and resumed at 5.05 p.m.

36. Mgr. BAMBAREN GASTELUMENDI said that both solutions proposed for rule 68 sought to regulate the procedure to be followed in cases where the report submitted by a State party was considered to be incomplete, but not in cases where the Committee decided that a State party had not fulfilled some of its obligations. Under the corresponding rule of the Rules of Procedure of the Human Rights Committee, in such a case, that Committee could make to the State concerned all the general comments it considered appropriate. In his opinion, rule 68 should be supplemented by provisions to that effect.

37. Mr. KOLOSOV said he thought that the latter case was provided for in rule 66, paragraph 2.

38. Mgr. BAMBAREN GASTELUMENDI pointed out that rule 66 dealt with the non-submission of reports, while he himself was proposing to regulate the possibilities of action available to the Committee when it decided, following the consideration of the reports and information submitted by a State party, that that State had not implemented in practice some of the rights referred to in the Convention.

39. Mrs. SANTOS PAIS said that the idea put forward by Mgr. Bambaren Gastelumendi was to be borne in mind, but that it would be much more logical to incorporate it in the provisions of rule 70 relating to suggestions and general recommendations by the Committee.

40. Mr. HAMMARBERG said that he supported that suggestion. Reverting to the new wording proposed for rule 68, he noted that Mr. Kolosov's idea seemed to be that of undertaking - probably at the stage of the preparation of sessions - a preliminary examination of the reports submitted in order to determine whether they furnished all the information required or whether additional reports had to be requested even before the States parties concerned were invited to a session of the Committee. However, except where a report contained flagrant shortcomings, the Committee would be unable to judge its weaknesses and merits without initiating its consideration and examining it in detail; at that stage, the Committee could obtain additional information and it should have the possibility of requesting an additional report, where necessary. The substantive discussion was supposed to take place in plenary and in the presence of the representatives of the State party concerned. Consequently, before inviting States parties to attend its sessions, the Committee could decide only whether reports were admissible as such or not. The new wording proposed for rule 68 clearly reflected that approach.

41. Mr. KOLOSOV recalled that, under article 44 of the Convention, States parties were obliged to submit to the Committee only an initial report within two years of the entry into force of the Convention for the State party

concerned and subsequent reports every five years. Therefore, if the Committee followed the procedure described by Mr. Hammarberg, it might receive a justified refusal on the part of the States parties if it asked them for additional reports. The purpose of rule 68, paragraph 1, was precisely to avoid such situations. He therefore considered that the preliminary examination envisaged in that paragraph should be much more than a mere declaration of admissibility: it should be more than formal and also relate to substance in order to identify the shortcomings of the report in question and thus offer the Government concerned the possibility of preparing itself fully for the dialogue with the members of the Committee without it being necessary to revert to the report at a subsequent session.

42. Mr. HAMMARBERG said that the need to ensure the proper implementation of the Convention, which dealt with such important questions, was well worth several journeys by representatives of States parties to attend the sessions of the Committee. The important thing was to initiate and maintain a serious dialogue with the States parties so that they would think about ways of improving their implementation of the Convention. It nevertheless seemed that the members of the Committee were prepared to envisage a preliminary examination of the reports before sessions were held. It had to be determined whether such an examination should be used to plan meetings and decide which reports the Committee would study immediately or whether it should be an opportunity to make an initial evaluation of the reports, in which case the Committee would be able to express its views only on the question whether the reports submitted met the basic reporting requirements. Furthermore, those basic requirements still had to be defined.

43. Mrs. SANTOS PAIS said that the new wording proposed for rule 68 presupposed an examination of the reports submitted; otherwise, how would the Committee arrive at the conclusion that it had to request an additional report or additional information? The range of rights referred to in the Convention was so broad that it was important to guide the State party by such requests, made at a preliminary stage, so that they would be quite able to prepare for the submission of their report to the Committee and for its examination. At the same time, the Committee should not refuse to invite a State party to submit its report in plenary if the additional information furnished at its request was still insufficient or if the State party admitted that it did not have the necessary information; after all, the examination of the report in plenary was an opportunity to begin the dialogue with the State party concerned and to make constructive criticisms which would have the effect of improving the quality of its reports and the cooperation between the State concerned and the Committee. Seen from that angle, the approaches taken by Mr. Kolosov and Mr. Hammarberg were reconcilable.

44. Miss MASON asked Mr. Kolosov if he meant that the Committee should actually meet in order to determine, in the first stage, whether the report submitted by a State party pursuant to article 44 was admissible.

45. Mr. KOLOSOV said he thought that the first session of the Committee would be somewhat different from the following sessions, since it would be devoted in part to determining, without the presence of the representatives of the

Governments concerned, the reports which could be submitted at the following session by those representatives. He recalled that the Committee was obliged to examine reports in the presence of representatives of States parties, who should know well enough in advance the date on which they would have to appear before the Committee.

46. Mr. HAMMARBERG said that the problem was still whether or not the Committee should hold pre-sessional meetings. He proposed, on a provisional basis, that the Committee should adopt the text suggested by Mrs. Klein-Bidmon, deleting the words "report or" at the end of paragraph 2 with a view to allaying Mr. Kolosov's fears.

47. Mr. KOLOSOV stressed once again that, under rule 65, the States parties were obliged to submit their report to the Committee only within two years after the entry into force of the Convention and, thereafter, every five years and that a Government could therefore legitimately refuse to come to introduce an official report at other times. Moreover, the Committee would have too much work during its sessions to be able, in addition, to invite many States to come back to provide additional information.

48. Mr. HAMMARBERG said he thought that the Committee did not have to appear to be unduly humble before Governments because it was Governments which had entrusted it with the task of examining the implementation of an agreement which they themselves had concluded. The Committee therefore certainly had the right to invite Governments as often as it considered necessary even if it was true that Governments were not obliged to submit reports more often than provided in rule 65.

49. The CHAIRMAN said it was her understanding that the problem was whether the Committee could, when it considered that the information furnished by a State party was insufficient, reject the report submitted even before it had made contact with the representatives of the Government concerned or whether it was after having established the dialogue with that Government that it might decide that it would be desirable for the Government to provide additional information.

50. Mgr. BAMBAREN GASTELUMENDI said he would like to know what practice was followed in that regard by the Human Rights Committee.

51. Mrs. KLEIN-BIDMON (Secretariat) said that the Human Rights Committee had never officially rejected a report. If the report had not been prepared in accordance with the Committee's guidelines, it put questions to the representatives of the State party, who could thus provide additional information. If the Committee was not satisfied with their replies, it could request additional written information or, indeed, ask the secretariat to contact the Government concerned informally in order to try to obtain a more complete report. As could be seen, a number of possibilities were available.

52. The CHAIRMAN suggested that the members of the Committee should take more time to examine rule 68 carefully and resume its consideration at a subsequent meeting.

Rule 69

53. Mrs. SANTOS PAIS said she recalled that, during the consideration of rule 34, it had been decided to invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to participate in the discussion and she thought that it would be useful to postpone the consideration of rule 69, which also concerned the specialized agencies, so that it could be taken up at the same time as rule 34.

54. The CHAIRMAN said that the necessary arrangements would be made so that the representatives of the specialized agencies, the United Nations Children's Fund and other United Nations organs concerned could be present during the discussion of rules 34 and 69.

55. Mr. HAMMARBERG recalled, in that connection, that, during an informal meeting in May, it had been proposed that the specialized agencies and non-governmental organizations concerned should be invited to take part with the Committee in a general discussion on the Convention. He requested the Chairman to inquire into the possibility of organizing such a discussion.

The meeting rose at 5.55 p.m.